IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.435 OF 2004

M/s.S.R.Fashions. ... Petitioner.

vs.

M/s. APS International Inc. ... Respondents.

Mr.H.N.Thakore i/b. M/s.Thakore, Jariwala & Associates, for Petitioners.

None for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 21st February, 2005.

P.C.:-

1. Admittedly this is a petition filed under Section 9 of the Arbitration and Conciliation Act,1996. Only two reliefs are claimed, the first relief is for appointment of a receiver, and the second relief is for temporary injunction restraining the respondents from

disposing of the properties. Admittedly, the Arbitral Tribunal is already in place and the reasons that have been given for not approaching the Arbitral Tribunal for seeking interim relief under Section 17 of the Arbitration and Conciliation Act, are given in paragraph no.11 of the Petition, which read as follows:-

> (a) The respondent is not available and not attending the hearing.
>
> (b) The Arbitral Tribunal with a view to ensure fair play and justice is giving indulgence to the Respondents by not proceeding ex-parte till date.
>
> (c) The petitioners have reliably learnt that inability of the Tribunal to proceed ahead with the matter is due to the fact that the Respondents have already left the country and are evading service of the Arbitration Proceedings.

None of these reasons can be a justification for not moving the Arbitral Tribunal. I do not find any basis for assuming that the Arbitral Tribunal will not entertain the application for interim relief only because the other side is not served.

2. So far as prayer for appointment of the receiver is concerned, the admitted position is that the properties in relation to which the receiver is sought, are not mortgaged to the petitioner. Therefore, there is no question of Receiver being appointed. What the petitioner has claimed, is an Award for payment of money in the Arbitral Proceedings, therefore, there is no question of granting temporary injunction restraining the respondents from transferring the properties. Because an Award is for payment of money, there is no question of petitioner suffering any irreparable injury. An appropriate remedy for the petitioner was to apply for attachment before judgment, after making appropriate averments in the petition, but the petitioner has chosen not to apply for that. Therefore, the petition is totally misconceived and hence, disposed of.

3. Any ad-interim order that may be operating in the petition, is vacated.

21.2.2005 ----